

AMENDED IN ASSEMBLY MAY 9, 2006
AMENDED IN ASSEMBLY JUNE 22, 2005
AMENDED IN SENATE MARCH 31, 2005

SENATE BILL

No. 192

Introduced by Senator Scott
(Coauthors: Senators Romero and Torlakson)
(Coauthors: Assembly Members Koretz, Pavley, and Wolk)

February 10, 2005

An act to ~~add Sections 789.8 and 789.85 to~~ *amend Section 789.8 of, and to add Section 789.85 to,* the Insurance Code, relating to annuities.

LEGISLATIVE COUNSEL'S DIGEST

SB 192, as amended, Scott. Annuities: seniors.

Existing law generally regulates insurance, including annuity products. Existing law requires a life insurance agent to provide specified disclosures to a senior 65 years of age or older in certain circumstances. Existing law prohibits the sale of an annuity to a senior in specified circumstances.

This bill would require a life insurance agent who sells a financial product to a senior to make specified disclosures regarding the effects under the Medi-Cal program of the purchase of the annuity.

The bill would require every insurer authorized to issue annuities in California to develop or adopt written suitability standards to determine whether the purchase or replacement of an annuity contract is appropriate for the needs of an applicant or annuitant who is 65 years of age or older, except as specified. The bill would prohibit an insurer from issuing an annuity if it determines the annuity does not

meet its suitability standards, and would provide that an insurer or agent has no obligation to issue an annuity under certain circumstances. It would set forth criteria to be applied in developing suitability standards, require that certain information be provided to the Insurance Commissioner, allow the commissioner to order corrective actions for violations of these provisions, and impose other specified requirements on insurers and agents that sell annuities.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 789.8 of the Insurance Code is amended
2 to read:

3 789.8. (a) “Elder” for purposes of this section means any
4 person residing in this state who is 65 years of age or older.

5 (b) If a life agent offers to sell to an elder any life insurance or
6 annuity product, the life agent shall advise an elder or elder’s
7 agent in writing that the sale or liquidation of any stock, bond,
8 IRA, certificate of deposit, mutual fund, annuity, or other asset to
9 fund the purchase of this product may have tax consequences,
10 early withdrawal penalties, or other costs or penalties as a result
11 of the sale or liquidation, and that the elder or elder’s agent may
12 wish to consult independent legal or financial advice before
13 selling or liquidating any assets and prior to the purchase of any
14 life or annuity products being solicited, offered for sale, or sold.
15 This section does not apply to a credit life insurance product as
16 defined in Section 779.2.

17 (c) (1) A life agent who offers for sale or sells a financial
18 product to an elder on the basis of the product’s treatment under
19 the Medi-Cal program may not negligently misrepresent the
20 treatment of any asset under the statutes and rules and regulations
21 of the Medi-Cal program, as it pertains to the determination of
22 the elder’s eligibility for any program of public assistance.

23 (2) The agent shall inform the elder that the annuity is subject
24 to recovery by the state upon the annuitant’s death under the
25 provisions of the Medi-Cal Recovery Program, as set forth in
26 Section 50960 of Title 22 of the California Code of Regulations.
27 The agent shall also inform the elder that income derived from
28 the annuity shall be used for the annuitant’s share of costs and, if

1 married, impacts the minimum monthly maintenance needs
2 allowance of the annuitant's spouse.

3 (d) A life agent who offers for sale or sells any financial
4 product on the basis of its treatment under the Medi-Cal program
5 shall provide, in writing, the following disclosure to the elder or
6 the elder's agent:

7
8 "NOTICE REGARDING STANDARDS FOR MEDI-CAL
9 ELIGIBILITY

10
11 If you or your spouse are considering purchasing a financial
12 product based on its treatment under the Medi-Cal program, read
13 this important message!

14 You or your spouse do not have to use up all of your savings
15 before applying for Medi-Cal.

16
17 UNMARRIED RESIDENT

18
19 An unmarried resident may be eligible for Medi-Cal benefits if
20 he or she has less than (insert amount of individual's resource
21 allowance) in countable resources.

22 The Medi-Cal recipient is allowed to keep from his or her
23 monthly income a personal allowance of (insert amount of
24 personal needs allowance) plus the amount of any health
25 insurance premiums paid. The remainder of the monthly income
26 is paid to the nursing facility as a monthly share of cost.

27
28 MARRIED RESIDENT

29
30 COMMUNITY SPOUSE RESOURCE ALLOWANCE: If one
31 spouse lives in a nursing facility, and the other spouse does not
32 live in a facility, the Medi-Cal program will pay some or all of
33 the nursing facility costs as long as the couple together does not
34 have more than (insert amount of community countable assets).

35 MINIMUM MONTHLY MAINTENANCE NEEDS
36 ALLOWANCE: If a spouse is eligible for Medi-Cal payment of
37 nursing facility costs, the spouse living at home is allowed to
38 keep a monthly income of at least his or her individual monthly
39 income or (insert amount of the minimum monthly maintenance
40 needs allowance), whichever is greater.

1 FAIR HEARINGS AND COURT ORDERS

2
3 Under certain circumstances, an at-home spouse can obtain an
4 order from an administrative law judge or court that will allow
5 the at-home spouse to retain additional resources or income. The
6 order may allow the couple to retain more than (insert amount of
7 community spouse resource allowance plus individual's resource
8 allowance) in countable resources. The order also may allow the
9 at-home spouse to retain more than (insert amount of the monthly
10 maintenance needs allowance) in monthly income.

11
12 REAL AND PERSONAL PROPERTY EXEMPTIONS

13
14 Many of your assets may already be exempt. Exempt means
15 that the assets are not counted when determining eligibility for
16 Medi-Cal.

17
18 REAL PROPERTY EXEMPTIONS

19
20 ONE PRINCIPAL RESIDENCE: One property used as a home
21 is exempt. The home will remain exempt in determining
22 eligibility if the applicant intends to return home someday.

23 The home also continues to be exempt if the applicant's spouse
24 or dependent relative continues to live in it.

25 Money received from the sale of a home can be exempt for up
26 to six months if the money is going to be used for the purchase of
27 another home.

28 REAL PROPERTY USED IN A BUSINESS OR TRADE:
29 Real estate used in a trade or business is exempt regardless of its
30 equity value and whether it produces income.

31
32 PERSONAL PROPERTY AND OTHER EXEMPT ASSETS

33
34 IRAs, KEOGHs, AND OTHER WORK-RELATED PENSION
35 PLANS: These funds are exempt if the family member whose
36 name it is in does not want Medi-Cal. If held in the name of a
37 person who wants Medi-Cal and payments of principal and
38 interest are being received, the balance is considered unavailable
39 and is not counted. It is not necessary to annuitize, convert to an

1 annuity, or otherwise change the form of the assets in order for
2 them to be unavailable.

3 PERSONAL PROPERTY USED IN A TRADE OR
4 BUSINESS.

5 ONE MOTOR VEHICLE.

6 IRREVOCABLE BURIAL TRUSTS OR IRREVOCABLE
7 PREPAID BURIAL CONTRACTS.

8 THERE MAY BE OTHER ASSETS THAT MAY BE
9 EXEMPT.

10 This is only a brief description of the Medi-Cal eligibility rules.
11 For more detailed information, you should call your county
12 welfare department. Also, you are advised to contact a legal
13 services program for seniors or an attorney who is not connected
14 with the sale of this product.

15 I have read the above notice and have received a copy.

16 Dated: _____ Signature: _____”

17 The statement required in this subdivision shall be printed in at
18 least 12-point type, shall be clearly separate from any other
19 document or writing, and shall be signed by the prospective
20 purchaser and that person’s spouse, and legal representative, if
21 any.

22 (e) The State Department of Health Services shall update this
23 form to ensure consistency with state and federal law and make
24 the disclosure available to agents and brokers through its Internet
25 Web site.

26 (f) Nothing in this section allows or is intended to allow the
27 unlawful practice of law.

28 (g) Subdivisions (b) and (d) shall become operative on July 1,
29 2001.

30 SEC. 2. Section 789.85 is added to the Insurance Code, to
31 read:

32 789.85. (a) Every insurer authorized to issue annuities in
33 California shall do each of the following:

34 (1) Develop or adopt written suitability standards to determine
35 whether the purchase or replacement of an annuity contract is
36 appropriate for the needs of an applicant or annuitant who is a
37 senior.

38 (2) Ensure the use of procedures to determine whether the sale
39 and issuance of annuity contracts to seniors meet the suitability
40 standards developed by the insurer.

1 (3) Adopt or establish and maintain a system to supervise life
2 agents that is designed to achieve compliance with this section
3 and remediate identified problems and complaints. An insurer
4 may contract with a third party, including a managing general
5 agent or independent agency, to establish and maintain a system
6 of supervision with respect to the insurer's appointed life agents.
7 An insurer shall ensure that the third party is performing the
8 functions required under this subdivision by taking any action
9 that is reasonable to enforce the contractual obligation to perform
10 those functions.

11 (4) Maintain a copy of its suitability standards and make them
12 available for inspection upon request by the commissioner. The
13 commissioner may order amendment or revision of the suitability
14 standards if any portion violates the law.

15 (5) Conduct periodic reviews of its records that are reasonably
16 designed to assist in detecting and preventing violations of this
17 section and the applicable suitability standards.

18 (b) The suitability standards shall take into account the
19 senior's insurance needs and goals, including, but not limited to,
20 the following:

21 (1) His or her age.

22 (2) His or her tax status.

23 (3) His or her financial status, including the percentage of the
24 senior's net worth that the proposed annuity represents.

25 (4) His or her objectives and how the proposed annuity fulfills
26 those objectives.

27 (5) Whether the senior has funds, exclusive of the proposed
28 annuity, sufficient to finance *his or her* health care needs,
29 residential care, long-term care or other similar expenses.

30 (6) Any other information used or considered reasonable by
31 the life agent, or the insurer.

32 (c) If sufficient information to make a determination is not
33 available, the life agent, or insurer where no life agent is
34 involved, shall make reasonable efforts to obtain the information
35 set forth in subdivision (b).

36 (d) The life agent, or insurer where no life agent is involved,
37 shall use the suitability standards developed pursuant to this
38 section in determining whether issuing the annuity is appropriate
39 for the senior. An insurer shall not issue an annuity pursuant to

1 its system to supervise life agents if the insurer determines that
2 the issuance of the annuity does not meet its suitability standards.

3 (e) (1) Except as provided in paragraph (2), neither a life
4 agent, nor an insurer where no life agent is involved, shall have
5 any obligation to a senior consumer under this section related to
6 the issuance of an annuity if the senior consumer does any of the
7 following:

8 (A) Refuses to provide relevant information requested by the
9 insurer or life agent and signs a written statement to that effect.

10 (B) Decides to enter into an insurance transaction that is not
11 based on a recommendation of the insurer or life agent.

12 (C) Provides materially inaccurate information, or fails to
13 provide material information that is requested by the insurer or
14 life agent and is necessary to determine suitability.

15 (2) The issuance or delivery by an insurer or life agent of an
16 annuity subject to this section shall be reasonable under all the
17 circumstances that the insurer or life agent knew or should have
18 known about pursuant to the insurer's suitability standards at the
19 time of the sale.

20 (f) The insurer or other person shall report the following
21 information to the commissioner on an annual basis:

22 (1) The total number of applications for annuities received
23 from residents of this state.

24 (2) The age of the applicants.

25 (3) The total number of applications rejected and the reasons
26 therefor.

27 (g) Each insurer, managing general agent, and life agent, or
28 the independent agency contracted to supervise its life agents,
29 shall maintain or be able to make available to the commissioner
30 records of the information collected from the senior consumer
31 and other information that was used for underwriting or
32 evaluating suitability for five years after the insurance transaction
33 is completed by the insurer. An insurer is permitted, but shall not
34 be required, to maintain documentation on behalf of a life agent.

35 (h) Records required to be maintained by this section may be
36 maintained in paper, photographic, microprocess, magnetic, or
37 electronic media, or by any process that accurately reproduces
38 the actual document.

39 (i) For the purposes of this section, the following definitions
40 apply:

1 (1) “Senior” means a person 65 years of age or older.

2 (2) “Insurer” means any entity authorized to issue annuities in
3 California, including a fraternal organization.

4 (j) If any provision in this section is in conflict with any
5 provision of Chapter 3 (commencing with Section 25230) of Part
6 3 of Title 4 of the Corporations Code, the provision of the
7 Corporations Code shall control.

8 (k) With respect to recommendations for the sale of variable
9 annuities registered under federal securities statutes, compliance
10 with the National Association of Securities Dealers (NASD)
11 Conduct Rules pertaining to suitability shall satisfy the
12 requirements of this section. The commissioner may enforce the
13 provisions of those rules.

14 (l) Unless otherwise specifically included, this section shall
15 not apply to contracts used to fund any of the following:

16 (1) An employee pension or welfare benefit plan that is
17 covered by the Employee Retirement and Income Security Act
18 (ERISA).

19 (2) A plan described by Section 401(a), 401(k), 403(b),
20 408(k), or 408(p) of the United States Internal Revenue Code, as
21 amended, if established or maintained by an employer.

22 (3) A government or church plan defined in Section 414 of the
23 United States Internal Revenue Code, a government or church
24 welfare benefit plan, or a deferred compensation plan of a state
25 or local government or tax exempt organization under Section
26 457 of the United States Internal Revenue Code.

27 (4) A nonqualified deferred compensation arrangement
28 established or maintained by an employer or plan sponsor.

29 (5) A settlement of or assumption of liabilities associated with
30 personal injury litigation or any dispute or claim resolution
31 process.

32 (6) A formal prepaid funeral contract under ten thousand
33 dollars (\$10,000).

34 (m) The Commissioner may order:

35 (1) An insurer to take reasonably appropriate corrective action
36 for any senior consumer harmed by a violation of this section by
37 the insurer or its appointed life agent.

38 (2) A life agent to take reasonably appropriate corrective
39 action for any senior consumer harmed by the life agent’s
40 violation of this section.

1 (3) A managing general agent that employs or contracts with a
2 life agent to sell, or solicit the sale of annuities, to senior
3 consumers, to take reasonably appropriate corrective action for
4 any senior consumer harmed by the life agent's violation of this
5 section.

6 (n) Any applicable penalty for a violation of this section may
7 be reduced or eliminated if corrective action for the senior
8 consumer was taken promptly after a violation was discovered.

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